

School Impact Fee Working Group
(Established by Act 246, Session Laws of Hawai'i 2005)
State of Hawai'i
www.state.hi.us/auditor

Minutes of Meeting

The agenda for this meeting was filed with the Office of the Lieutenant Governor, as required by Section 92-7(b), Hawai'i Revised Statutes.

Date: Friday, December 9, 2005

Time: 10:00 a.m.

Place: State Capitol
415 South Beretania Street
Conference Room 225
Honolulu, Hawai'i

Present: Senator Sakamoto, President of the Senate Designee
Austin Imamura, Designee for the Mayor of the City & County of Honolulu
Randy Moore, DOE, Superintendent of Education Designee (in place of Rae Loui) (late arrival)
Anthony Ching, Executive Director, Land Use Commission
Dain Kane, President of the Hawai'i Association of Counties
Duane Kashiwai, DOE Employee whose primary area of responsibility is repair and maintenance, capital improvement projects, and land use planning
Patricia Park, DOE, Central Oahu Complex Area Superintendent
Dean Uchida, Executive Director, Land Use Research Foundation (late arrival)
Bob Bruhl, Development Community Member

Marion M. Higa, State Auditor
Jan Yamane, Administrative Deputy Auditor/In-House Counsel, Office of the Auditor
Pat Mukai, Secretary, Office of the Auditor

Ralph Portmore, Group 70 International
Anna Liza Gavieres, SMA
Jake Ng, Senator Sakamoto's office

Absent: Representative Roy Takumi, Speaker of the House of Representatives Designee

Call to Order: Member Sen. Sakamoto called the meeting to order at 10:07 a.m., at which time quorum was established.

Introductions: School Impact Fee Working Group members and Office of the Auditor staff introduced themselves:

Norman Sakamoto, Chair of Education & Military Affairs Committee
Anthony Ching, Executive Director of Land Use Commission
Pat Mukai, Secretary, Office of the Auditor
Jan Yamane, Administrative Deputy Auditor/In-House Counsel, Office of the Auditor
Marion M. Higa, State Auditor
Duane Kashiwai, DOE
Pat Park, DOE Complex Area Superintendent
Bob Bruhl, Executive Management Team, D.R. Horton-Schuler Homes
Austin Imamura, Pacific Rim representing Honolulu City Council
Dain Kane, HSAC, Maui Councilmember

Member Sen. Sakamoto asked whether Dean Uchida (LURF) would attend. Ms. Yamane stated yes. Rae Loui (DOE) was also supposed to attend.

Member Sen. Sakamoto decided to proceed with the meeting. He asked whether members had reviewed the legislation. He summarized concerns raised during the last legislative session. In general, the developer community is looking for consistency in how funds and land get allocated to the schools. Currently there's the Land Use Commission, county processes, various state agencies, and county agencies that have other priorities besides schools. From the department's perspective or the public's perspective, how can we get to a better place where schools can be constructed. From the developer's perspective, they're looking for certainty in the process. Both sides are looking for fairness. The intention of this legislation was to having the respective parties appoint people so this working group would consist of counties, state, developers, and DOE. Member Sen. Sakamoto asked for comments or questions.

Member Bruhl asked about the Act itself. One of the overall objectives is to make recommendations that would be presented 20 days prior to the commencement of the Legislature, which starts in January. Member Sen. Sakamoto clarified that the Regular Session of 2006 begins on January 18, 2006.

(Mr. Randy Moore arrived at 10:07 a.m.)

Member Bruhl asked whether the Working Group needs to amend the charter or do we recognize that we are not going meet that deadline and set a new goal for ourselves?

Member Sen. Sakamoto referred Member Bruhl to further down the agenda, item VIII, regarding the Working Group's report to the Legislature. He deferred to the Auditor's Office for an explanation on report procedure.

Member Sen. Sakamoto asked Mr. Moore whether he was going to be the permanent member in lieu of Ms. Loui. Mr. Moore replied that he would be taking her place for this meeting. Member Moore was asked to introduce himself: Randy Moore, Project manager for Act 51 (works in the Superintendent's office).

Member Sen. Sakamoto asked the Auditor's Office to give some background on where we are and how to proceed. State Auditor Higa stated that from Act 246, the Office of the Auditor has been assigned responsibility and administration of the Working Group. There are also appropriations that the Working Group may use in the event a contractor is engaged. State Auditor Higa then went over some housekeeping matters, including updating contact information and adjustments in our staffing. Ms. Yamane stated that Member Park provided a new e-mail address, which is her preferred address.

State Auditor Higa continued with additional housekeeping matters, including member reimbursement for expenses and Capitol parking. She also explained that the Working Group meetings will be conducted under the Sunshine Law, Chapter 92 of the statutes. She asked Ms. Yamane to go over some of the overall principles and how it impacts the Working Group.

Ms. Yamane explained that the Sunshine Law is Chapter 92 of Hawai'i Revised Statutes. The principle involved is open government. This public policy protects the people's right to know. She explained the Sunshine Law's legal requirements, including posting and filing agendas, taking minutes, and prohibitions on member interactions on agenda items outside of the public meeting. Ms. Yamane indicated that she would assist with guiding the Working Group so as not to violate Sunshine.

State Auditor Higa added that the Sunshine Law requires a quorum to do business (6 of 10 members) and a majority of members to make decisions (6 of 10 members). Under a strict interpretation of Chapter 92, if the Working Group loses quorum, the meeting should be stopped until quorum is resumed. Members were asked to notify the Office of the Auditor if they cannot attend the meeting. With only 10 members, every member counts. To add an item to the agenda, the Working Group needs a two-thirds vote (7 of 10 members).

State Auditor Higa also mentioned that the Act 246 appropriation will be used to engage a consultant. Further, the law allows the Working Group to procure the consultant outside the procurement code. Contracting with a consultant will be up for discussion today.

Ms. Yamane responded to Member Bruhl's question of the form of the report to be submitted to the Legislature 20 days prior to session. One way to handle it would be to send a letter explaining where the Working Group committee is in terms of its process – the Working Group would forward the letter to the Legislature and explain its intention to continue to work through session.

State Auditor Higa added that Member Rep. Takumi was appointed by the Speaker of the House to be the House's representative on the Working Group. He is currently out of town and could not attend today.

Member Moore asked whether Chapter 92 prohibits the three DOE members from discussing what is the appropriate DOE approach or response.

Ms. Yamane clarified that the three DOE members cannot discuss agenda items, especially votes about those items. Member Moore asked how the DOE can come up with a coherent perspective. Ms. Yamane restated that discussions among DOE employees cannot violate Sunshine. Member Kashiwai stated that collecting data and compiling information on issues by DOE members would not be a violation.

State Auditor Higa reiterated that if a consultant comes back with its report, makes recommendations on what the Legislature or the department ought to do, and if at some point it does become an agenda item requiring a vote, then this is where the three DOE members could not discuss the department's vote, or what the respective votes would be as members of the working group. The issue could be clarified by the Office of Information Practices (OIP). Member Moore continued to raise concerns about disparate positions coming from the department. Further Sunshine Law discussion among members continued. Member Park asked whether the DOE members are representing themselves as employees of DOE or representing the DOE. Ms. Yamane stated that, according to the Act, DOE employees are designated to represent DOE interests in various areas.

Member Bruhl asked who are the voting members. State Auditor Higa said that each member of the working group has a vote.

Member Sen. Sakamoto asked other members for input. Member Ching suggested that DOE could designate two members as non-voting. Member Councilmember Kane reiterated that DOE members are brought in for their expertise in a specific area for the overall department. Therefore, their vote is based on expertise and what each member thinks is the best conclusion based on facts and analysis. DOE members do not discuss their votes. There is a lot of flexibility for members to provide information. If the intent is to get three votes and make sure you all stick together and vote the same way, this is where the Sunshine Law protects the public's right to know.

Member Sen. Sakamoto told members to vote when the time comes. If further advice is needed, the Working Group may turn to a deputy attorney general or the OIP.

Election of
Chair:

Upon a motion by Member Councilmember Kane, seconded by Member Park, it was voted on and unanimously carried to open nominations for Working Group Chair.

Member Sen. Sakamoto asked for nominations for the Working Group Chair.

Member Councilmember Kane nominated Member Sen. Sakamoto.

Upon a motion by Member Councilmember Kane, seconded by Member Park, it was voted on and unanimously carried to close nominations for Chair.

Upon a motion by Member Councilmember Kane, seconded by Member Kashiwai, it was voted on and unanimously carried to elect Member Sen. Sakamoto as Chair of the Working Group.

Orientation: Chair Sakamoto then called upon Ralph Portmore, Group 70 International, to provide an orientation on the 2001 School Fair Share Contribution Study.

(Member Uchida arrived at 10:34 a.m.)

Mr. Portmore said that the 2001 study was co-authored by Group 70 International and Duncan Associates, a firm that specializes in school impact fee studies. He handed out the statements of the purpose of the study and of the findings. The first study on impact fees in Hawai'i was conducted by the Land Use Research Foundation in 1992. The 2001 study got into the specifics of education impact fees and was recommended at the behest of the Land Use Commission (LUC) and developers. The study came up with specific recommendations for 2 separate bills: 1) to establish a land dedication requirement; and 2) to establish an impact fee related to school construction. After the study was completed, both the development community and the LUC wanted to keep things status quo. So, there was a concern to change the process and that's what initiated that bill that led to the study in 2001. But at the end of the process, the concern went away and that's why there was no follow-up. In 2001, when the initial study was started, business was bad and the LUC was heavily involved with all kinds of negotiations. By the end of the study, the community had fewer problems paying the fees and the LUC had come up with a solution, a mechanism that said they will negotiate any fee in lieu after its decision. There is a concern about the consistency and fairness. So, this led to a second study. Act 282, the original enabling legislation, and the study summarize the possibilities. Mr. Portmore indicated that there is no need to start at the beginning of the process. Rather, the Working Group could re-visit the options, which are fairly constrained because there is extensive legislative history on what these fees can and cannot do. Act 246 calls for a test case study for Central Oahu and asks what it would actually look like.

Roundtable Interaction: Member Councilmember Kane asked whether: 1) the concern was driven by economic issues and 2) the process might strive for more stability.

Mr. Portmore stated the process could be set up in a very precise way. Everybody would know and agree that it's fair. In Mr. Portmore's opinion, the original legislation happened when developers were feeling the pinch. By the time the bill passed and the 2001 study was completed, developers were doing well and they were okay with paying the fees and dedicating the land. The process is complex and we don't know whether it would incur higher costs. Fees can be very extensive.

Member Ching stated that he is a non-voting member of the commission and that he does not speak for the commission. He asked about the concern by the LUC. Mr. Portmore said that the law was passed around 1998, so the movement began a few years prior to 2001.

Member Ching asked for clarification on the LUC's position at that time, to the best of Mr. Portmore's recollection. Mr. Portmore indicated that he didn't have specifics. The initial bill was driven by concerns by both the LUC and the development community. The effort and resources—the time that was required to negotiate agreements on a case by case—were all raised as concerns. Member Uchida asked Mr. Portmore whether the study was done at the request of the developers. Mr. Portmore referred to the report, which stated that the bill was passed in response to concerns raised by developers.

Member Uchida asked whether the DOE was the one that worked with Duncan Associates, to which Mr. Portmore responded in the affirmative. The recommendation at the end of the report was to not move forward. Part III of the effort—which involved presenting recommendations to the community and the Legislature—was cancelled.

Chair Sakamoto summarized that the manner in which assessments are made can be improved. The challenge for the Working Group is how to move forward in light of the study. Chair

Sakamoto asked whether the group should hire another consultant. Member Councilmember Kane referred back to Act 246, stating that the group would have to submit something to the Legislature 20 days prior to session. An extended period of time to work should be considered. It would be unrealistic to think that the Working Group could come up with recommendations by then.

Member Bruhl commented on the number of assumptions made that lead to important numbers. For example, did all enrollment statistics have a weighing impact on credits or on the costs per student ratio? If in Kapolei, Ewa, or Mililani, if you have 100% or 125% capacity, how are the numbers calculated? Other mature areas might need different calculations. This is a larger CIP issue.

Mr. Portmore responded that the study only deals with funding. The formula tries to reflect the conditions in each area in terms of growth and in terms of costs. But, to construct schools for new student enrollment, it's clear in the law you cannot raise funds, that is, collect funds from developers with new developments to build and fix up deficiencies for new students.

Member Park asked how Central Oahu is defined. Mr. Portmore replied that it combines part of Leeward, Wahiawa, and Waialua.

Member Moore asked whether there any reasons not to go forward with Group 70's 5-year old study and simply update numbers.

Member Uchida expressed that the whole issue needs to be evaluated. In Hawaii, there is growth in certain areas around the state, but the overall enrollment has been about the same for the last 20-30 years. So, the question is, given that the overall enrollment is about the same, are impact fees the right tool to use to accommodate this growth which is a re-distribution of population. Other models on the mainland are based on growth. Florida and Colorado have student projections of 20,000-30,000 for the next 10 years. Hawaii isn't like that. We have pockets of high growth and others where it's declining. The group should consider the whole package and not only where growth occurs. Member Uchida asked whether there is any place on the mainland with similar patterns, and if so, can Hawaii borrow from them. Chair Sakamoto summarized that one option is to update, not re-do.

Member Ching suggested that the Working Group identify the issue areas that need greater clarity. He further suggested that a study should be about implementing and understanding the roadblocks and why implementation hasn't occurred. Member Ching offered some principles. First, the role of the LUC needs clarification.

Member Imamura favors simplicity.

Member Ching wondered where to cut off the scope of contribution.

Member Councilmember Kane referenced many of the discussion topics and comments back to Act 246, pages 5-8. He offered that the Act states the functions of the Working Group and directs it to consider specific issues.

Member Uchida stated that Duncan Associates was just hired by the County of Hawai'i to look at their island-wide impact fee.

Chair Sakamoto asked the Working Group how it desires to move forward. Member Councilmember Kane stated that there is a need to update the prior report. It's important for the Working Group to have somebody, whether internally or externally, to go through the report, and do the actual update. It needs to address where we are today versus where we were when this report was initially completed.

Member Uchida stated that the prior study didn't look at closing existing schools.

Member Councilmember Kane asked for a clarification from the Auditor on the level of resources. Are there internal resources or will everything be contracted out with the \$150,000 appropriation? State Auditor Higa replied that her office does not have that kind of expertise.

Member Councilmember Kane asked about DOE's current practices. Will someone from DOE inform this body of practices today that are different from other practices done 4-5 years ago? Is there a goal we need to be aware of? Member Kashiwai indicated that the DOE members can consolidate their information. Current DOE practices are based upon the 2001 study.

Chair Sakamoto requested that DOE provide what it has done and what it has asked for. The group doesn't need a consultant for that portion of the work. Do counties use DOE projections? Member Councilmember Kane responded that, historically, there have been problems. There needs to be better correlation and a collaborative effort to get things moved through to development and education.

Chair Sakamoto asked whether various counties compare their previous general plans or projections with reality and how good are the planning projections? Member Councilmember Kane responded that his charter will require revision of general plans every 10 years.

Member Bruhl added that there are a combination of factors. General plans provide for general growth. In the case of the Ewa development plan, there are population projections. So, for the population projections, there are certain areas that are being developed under certain land uses, whether it be single family, higher density, commercial, or residential. They can make general calculation based on that.

Chair Sakamoto asked to what extent is the developer/community actually able to calculate a student impact? Member Bruhl stated that developers would contact facilities. They would go in and present the plan for the area, with projected density, and the DOE would tell the developer what the impact would be in terms of number of schools. Member Bruhl was recently provided with ratios of .273 students/per single family home, but doesn't know where those numbers come from.

Chair Sakamoto asked whether the process is working.

Member Bruhl responded that data is needed for a needs-based assessment. A comprehensive needs-based assessment involves more than just growth projections.

Member Uchida offered that developers of Waiawa and Koa Ridge can be asked to come in and lay out their plans for the area. Member Ching urged caution. For example, Waiawa is entitled, but not built. Although there were expectations that it would be built at a particular point in time, that hasn't happened.

Chair Sakamoto indicated that the state is trying to get moneys out of the development community to the greatest extent possible. The state wants to build schools. Chair Sakamoto concluded that for the case study, the Working Group should engage a consultant.

Member Councilmember Kane offered that it would be appropriate to have a neutral consultant come in and provide an outside approach.

Member Imamura wants to find a simple process. For example, California has a bedroom tax. The tax is tied to the number of bedrooms. So, if you have 4 bedrooms, the presumption is that the owner have kids. For a 4-bedroom, they pay \$1,000. There's no distinction between different types of 4-bedroom dwellings. If you have development in new area, it's going to be problematic. The extent of the development and the numbers will determine what is being paid for in that area.

Member Moore stated that the department has a constitution and a moral and statutory responsibility to provide public education. It's not the department's responsibility to raise moneys for public education. It's the department's responsibility to spend moneys effectively.

Chair Sakamoto stated that one purpose of the Working Group is to lessen the department's burden to haggle with the developer. Member Moore agreed.

Planning: Chair Sakamoto asked State Auditor Higa for suggestions on how to proceed. State Auditor Higa proposed two items for decision. First, the group needs to decide on some response to the Legislature to meet the 20-day requirement. It can be accomplished simply by letter, informing President/Speaker that the group has met and is still discussing the issues. Second, if the group decides to engage a consultant, it would be helpful to have the parameters for that contract.

Member Councilmember Kane reminded the group of the specificity of Act 246, which directs the Working Group to conduct a case study. It nicely provides these parameters for that. State Auditor Higa added that the Working Group is not subject to the procurement code. The way the Office of the Auditor approaches any kind of contractual obligation is to set out specifications for proposers. She offered to prepare a draft of what specifications might look like, taking into consideration today's discussion, and the legislation. The group could then work off of that draft.

State Auditor Higa offered the Working Group to draft a letter for the Working Group's approval and vote and a description of what you would like to have the consultant cover. She suggested that the Working Group have a decision-making meeting and consider a draft.

Member Bruhl stated his concern that the study will be limited to new development. The needs assessment should consider what is truly needed by the state, DOE, not by Central Oahu. Member Bruhl agrees with a comprehensive planning effort. The most important factors are the variables DOE uses today, which are based on the number of students per home. Statewide or island wide numbers need to be considered.

Future Meetings: Member Chair Sakamoto began planning for the next meeting. State Auditor Higa suggested that the meeting be on December 28, 2005. The next meeting was scheduled for:

Date: December 28, 2005
Time: 10:00 a.m.
Place: State Capitol, Conf. Rm. 225.

Adjournment: With no further business to discuss, the Chair adjourned the meeting at 12:06 p.m.

Reviewed and approved by:



Jan Yamane
Administrative Deputy Auditor/In-House Counsel

December 28, 2005

[X] Approved as circulated.

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